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Supreme Court, U.S.
F I L E D

001701 MAY - 8 2001

CASE NUMBER

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

STEPHEN R. BODELL, AND
STEPHEN R. BODELL ON BEHALF OF
SARAH J. BODELL, AN INFANT CITIZEN,
PETITIONERS

v.

BILL CUNNINGHAM,
JO ANN NEWSOM,
ROBERT F. STEPHENS,
MARGARET JANE ANDERSON,
PETER LEHMAN,
HELEN HOWARD-HUGHES, AND
JILL GIORDANO,
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO THE U. S. COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted by,
Stephen R. Bodell, *Pro Se*
For himself and for his
infant daughter
P. O. Box 3121
Paducah, KY 42002
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69 pp

QUESTIONS FOR REVIEW

Question One. Is strict scrutiny the proper standard for application to intentional invidious discrimination by federal government actors against persons because they are mixed race persons who are descended in substantial part from the majority European Caucasian race and also in substantial part from a minority race?

Question Two. Does repeated intentional refusal, by the same federal appeals court, to comply with and obey concise holdings published in more than one Supreme Court decision constitute: a deprivation of the Fifth Amendment right to due process of law; and/or a deprivation of the First Amendment right to petition the Government for a redress of grievances; and/or a deprivation of the right to a full and fair opportunity to litigate stated in *Allen v. McCurry*, 449 U.S. 90 (1980)?

STATEMENT IN REGARD TO PARTIES AND IN REGARD TO CORPORATE AFFILIATION

The cover of this Petition contains the name of all parties at the Supreme Court. Michael O. McDonald, an appellee at the Sixth Circuit, is not a party at the Supreme Court. Petitioners seek no relief against him and he has no interest in the outcome of the Supreme Court proceeding.

Neither Stephen R. Bodell nor infant Sarah J. Bodell have any present connection to any corporation, foreign or domestic.

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MAIN BODY OF CERTIORARI PETITION

LOWER COURT REPORTS

In response to Supreme Court Rule 14, 1.(d), there were no reports by lower courts in the case. There are no citations for official or unofficial reports of the opinions and orders entered in the case by lower courts.

BASIS FOR JURISDICTION IN THE SUPREME COURT

On February 7, 2001 Order was "Entered by Order of the Court" and signed by Leonard Green, Clerk of the U. S. Court of Appeals for the Sixth Circuit. The Order is contained in the Appendix. No party sought rehearing.

28 USC 1254 provides in (1): "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; ...."

LAW INVOLVED IN THE CASE

The Fifth Amendment to the U. S. Constitution specifies in part: "No person shall be ... deprived of life, liberty, or property, without due process of law; ...."

The First Amendment to the U. S. Constitution specifies in part: "Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances."

28 USC 1291 specifies in part: "The courts of appeals ... shall have jurisdiction of appeals from all final decisions of the district courts of the United States, ... except where a direct review may be had in the Supreme Court."

42 USC 1983 specifies in part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, ..."

STATEMENT OF CASE

The court of first instance was the U. S. District Court for the Western District of Kentucky. 28 USC 1331, which relates to federal question cases, specifies: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 USC 1343, which relates to civil rights cases, specifies in part:

> "(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> ...
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right,

privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; ...."

The above statutes provide basis in this present matter for federal jurisdiction in the court of first instance.

This case is one, of more than one, resulting from the multi-step outrageously unlawful and outrageously unconstitutional attack on the parent-child relationship between petitioner Stephen R. Bodell and his only child, infant U. S. citizen Sarah J. Bodell. The multi-government and multi-branch of government attack on this parent-child relationship is precisely that government oppression which is prohibited by the substantive component of due process. The reason for this oppression is the fact that Stephen R. Bodell and infant Sarah J. Bodell are mixed race citizens, being partly of European German Caucasian ancestry and partly of native American Sioux Indian ancestry.

Justice Scalia delivered the opinion of the Supreme Court in *Liteky v. United States*, 510 U.S. 540 (1994), a recent published decision in the area of judicial recusal jurisprudence. In *Liteky* Justice Kennedy filed an opinion concurring in the judgment, joined by Justice Blackmun, Justice Stevens, and Justice Souter. In his concurring opinion Justice Kennedy stated at the bottom of page 561: "Judges, if faithful to their oath, ..." *If* clearly suggests the possibility that not every single judicial officer in America is faithful to his or her oath 100% of the time.

Footnote 11 at page 164 in *Montana v.*

United States, 440 U.S. 147 (1979) provides: "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation." The Bodell petitioners come to the Supreme Court because two panels at the U. S. Sixth Circuit have not been faithful to their oath and because of stunning unfairness and stunning deprivations of federal constitutional rights in a series of legal cases that relate to the purported adoption of 8-year old Sarah Bodell by a deceased adult adopter. Over several years the only two courts of law which have not heaped outrageous unfairness, egregious deprivation of federal constitutional rights, and judicial misconduct on infant Sarah Bodell are the Supreme Court of the United States and the recently reconstituted Supreme Court of Kentucky.

The Appendix to the present Petition contains the March 14, 2001 reversal by the Supreme Court of Kentucky in a separate case related to the purported adoption of infant Sarah by a dead man. The Supreme Court of Kentucky is vested with legal authority to supervise and, when proper, reverse inferior state courts in Kentucky. But the Supreme Court of Kentucky does not have authority to interrupt or end the series of shams emanating from the federal appeals court for the Sixth Circuit. Article III of the U. S. Constitution specifically provides that there shall be one Supreme Court and "such inferior courts as the Congress may from time to time ordain and establish." 28 USC 1254 states that "Cases in the courts of appeals may be reviewed by the

Supreme Court ...." Only the Supreme Court of the United States is vested with the legal authority to supervise the federal appeals court headquartered in Cincinnati.

Included among the persons who seek to unlawfully destroy the parent-child relationship between Stephen R. Bodell and infant Sarah J. Bodell, *a fundamental liberty interest*, are certain persons in the employment of Kentucky state government, certain persons in the employment of the government of the United States, and the child's biological mother (a party in this case). Sarah's biological mother, Margaret Jane Anderson (a/k/a Jane A. Bodell), has gotten away with attempting to extinguish this child's life without legal justification not once but twice, because a clique of Kentucky prosecuting attorneys was far more interested in obtaining the removal of the child's father, Stephen R. Bodell, as their courtroom adversary than in protecting this child from hideously unlawful conduct. This clique spent five years in a series of cases seeking to obtain a criminal conviction against Stephen R. Bodell, to facilitate his removal from the practice of law in Kentucky courtrooms. In a case in 1990 they succeeded, convicting Stephen of not making and filing two state income tax returns. The clique sought, initially, to have Stephen incarcerated for 15 years. Kentucky now claims taxes in excess of $100,000.00 on losses exceeding $250,000.00, notwithstanding that in our national history no jurisdiction has ever enacted a loss tax.

Stephen R. Bodell was then disbarred in the state courts of Kentucky, based on an ex parte trial which he was not allowed to attend. This

disbarment trial was set, and in fact began, in Lexington in eastern Kentucky on the same day and at the same minute that Stephen was required to be in federal court proceedings 300 miles away in Paducah in the western tip of Kentucky. The Chief Judge of the Western District of Kentucky declined to impose discipline on Stephen. The written Local Rules for the Western District of Kentucky precisely reflected the holding enunciated in *Theard v. United States*, 354 U.S. 278 (1957). At page 281 in *Theard*, in the opinion delivered by Justice Frankfurter, the Supreme Court stated: "While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route." Stephen has remained in good standing as a member of the bar of the Kentucky federal court for a time period now nearing the two-decade mark.

Lexington, the chosen site for the ex parte disbarment trial, is in the eastern part of Kentucky and in the center of the state supreme court district which elected Robert F. Stephens to the Supreme Court of Kentucky and his position as Chief Justice. Robert F. Stephens is a defendant/appellee/respondent in the present legal case. The first time that Stephen R. Bodell filed papers at the state supreme court requesting relief concerning the unlawful conduct of Chief Justice Stephens, Chief Justice Stephens excluded three members of the court from consideration of these papers (including Justice Lambert). The result from the four members who did consider the papers, including Chief Justice Stephens, was that it was permissible for Chief Justice Stephens to engage in unlawful conduct.

The second time that Stephen R. Bodell filed papers seeking relief in regard to Chief Justice Stephens, there had been changes in the membership of the Supreme Court of Kentucky and also Justice Lambert had been selected as Deputy Chief Justice. On this second occasion Chief Justice Stephens either recused himself or was recused by his colleagues, resulting in the May 23, 1996 Supreme Court of Kentucky Order relating to trial court judge Bill Cunningham and the recusal process mandated by KRS 26A.020. The May 23, 1996 Order is contained in the Appendix to this certiorari Petition. Bill Cunningham is a defendant/appellee/ respondent in the present legal case.

KRS 26A.020 is a statute which calls for immediate consideration, at the state supreme court level, of an affidavit filed by a party litigant averring that the judge assigned to a case is biased. Both published and unpublished Kentucky cases show the KRS 26A.020 affidavit being faxed or mailed to the Chief Justice on the day it is filed. The Chief Justice immediately reviews the affidavit and either selects a new judge or sticks with the judge already assigned to the case. If the Chief Justice recuses himself, he immediately forwards the affidavit to the Deputy Chief Justice who then immediately reviews the affidavit. Bill Cunningham is assigned not to one, but to three cases, in Caldwell County, Kentucky in which the legal rights of infant Sarah Bodell are at stake. Bill Cunningham determined that the attempted blatantly unlawful incineration of Sarah, by her mother, when Sarah was a baby bears no legal relevance to Sarah's best interests. He did not

determine that this did not happen. He determined that, assuming all facts to be true, the attempted incineration of this human child by her female parent has no legal relevance to the child's best interests. Years after the affidavit was filed in the adoption case, it was finally forwarded to Chief Justice Stephens. He refused to review the affidavit and he refused to forward the affidavit to the Deputy Chief Justice. Instead he wrote a letter informing the parties that there would be *no* KRS 26A.020 recusal *process* in the Sarah Bodell adoption case, flagrantly in contempt of and obstructive of the May 23, 1996 unanimous Order rendered by the other six members of the Supreme Court of Kentucky. The KRS 26A.020 affidavits filed in the different Sarah Bodell cases assigned to trial court judge Bill Cunningham have a cumulative pendency in excess of 10 years, and yet not one affidavit has ever been reviewed pursuant to KRS 26A.020.

Chief Justice Stephens stepped down as Chief Justice to continue as a Justice of the Supreme Court of Kentucky. Stephen R. Bodell asked for relief a third time at the Supreme Court of Kentucky concerning Justice Stephens and also caused Justice Stephens to be summoned into the U. S. District Court because he had unlawfully obstructed the recusal process concerning trial court judge Bill Cunningham which was the subject of the May 23, 1996 Supreme Court of Kentucky Order. Justice Stephens resigned from the Supreme Court of Kentucky, and this mid-stream vacancy was filled by appointment by Kentucky's Governor. U. S. District Judge McKinley stated

in his February 10, 2000 judgment, which was the subject of appeal to the Sixth Circuit, that Justice Stephens had retired from the state supreme court. That is patently in conflict with the federal trial court record. The attorney for former Justice Stephens, the Kentucky Attorney General, stated that Justice Stephens had resigned from the court.

Justice Joseph E. Lambert was selected as the new Chief Justice of the Supreme Court of Kentucky.

Stephen R. Bodell was also imprisoned by Kentucky as another consequence of this remarkable state tax proceeding. Kentucky has a statutory scheme which allows for parole release. One statutory precondition to consideration for parole release was interview with the Parole Board. Notwithstanding the vigorous effort of Margaret Jane Anderson to obstruct Stephen from being allowed the mandatory interview, interview took place in June 1994. At this interview parole release was granted, pending completion of the necessary paperwork. The local Paducah, Kentucky parole office then dragged their collective feet on completing the necessary paperwork for two months until late August 1994. Stephen was actually released in August 1994.

Peter Lehman is a defendant/appellee/ respondent in the present legal case. Mr. Lehman had been a Kentucky probation and parole officer for decades. Margaret Jane Anderson is a defendant/appellee/respondent in the present legal case. Margaret Jane Anderson is the biological mother of Sarah Bodell. Margaret Jane is the former wife of Stephen R.

Bodell. She obtained a secret divorce by fraud. Margaret Jane is the primary instigator in all these matters. She seeks to avoid Sarah ever being permitted an opportunity to state in court that she wants to live with her father because her mother is a viciously violent child abuser. Kenneth Lewis, another defendant, also has been a Kentucky probation and parole for decades. Mr. Lewis was the office colleague of Mr. Lehman, and Mr. Lewis and Margaret Jane Anderson had been neighbors in Princeton, Kentucky.

Upon learning that Stephen R. Bodell had been released, notwithstanding her vigorous effort to the contrary, Margaret Jane Anderson immediately wrote a secret letter to the Paducah, Kentucky parole office. Her secret letter requested that the local parole office terminate the parent-child relationship between Stephen R. Bodell and infant Sarah J. Bodell during 1994, 1995, and 1996, as a condition of continued release on parole. This was sought as a political favor for the former neighbor of Kenneth Lewis, but was not based on an order from the judicial branch. As a result of this request from Margaret Jane Anderson, Mr. Lehman required that Stephen R. Bodell sign, in September 1994, a document indicating that Mr. Lehman had recommended to the Parole Board that they terminate this parent-child relationship during these three years. Mr. Lehman informed Stephen that while waiting for the Parole Board to act on his recommendation, he would instantly arrest Stephen and cause him to be imprisoned for at least one year if Stephen had any contact whatsoever with daughter Sarah.

Stephen R. Bodell was informed by Mr.

Lehman that in accordance with the Kentucky statutes and regulations a revised parole certificate would be issued over the signatures of Parole Board members which contained in writing the added condition terminating the parent-child relationship with Sarah Bodell. Stephen was also informed by Mr. Lehman that this "executive branch" termination of parental rights was in force and would remain in force during the three-year time period regardless of any past, present, or future judicial branch action granting Stephen child custody or visitation. The Parole Board, however, *never* issued a revised parole certificate containing this added condition.

Stephen R. Bodell was repeatedly warned by Mr. Lehman, in 1994, 1995, and 1996, that any attempt to challenge this executive branch parental termination in federal court would result in Stephen being returned to prison immediately. Stephen also was repeatedly warned by Mr. Lehman, in 1994, 1995, and 1996, that personally appearing opposite Margaret Jane Anderson in any state court proceeding or attempting to cross-examine her in any state court proceeding would result in Stephen being returned to prison immediately. Filing legal papers in the state courts was permissible, but actually going to court would result in immediate imprisonment. These threats were communicated in front of witnesses.

Helen Howard-Hughes is a defendant/appellee/respondent in the present legal case. In 1994 she was Chairperson of the Kentucky Parole Board. However, her appointment to the Parole Board was not renewed by Kentucky's

Governor and she left the Parole Board, to return to her home in Lexington, Kentucky. Helen Howard-Hughes purported to ratify, unlawfully so, the actions of local parole officer Peter Lehman. Helen Howard-Hughes wrote Stephen R. Bodell a letter: informing him that she had initialed a secret memorandum, informing him that was sufficient to end the parent-child relationship with Sarah, and warning him against going to court.

The guarantee of being sent directly to prison as punishment for filing a federal Complaint goes far beyond the Supreme Court's published point, from *Hardin v. Straub*, 490 U.S. 536 (1989), referred to later in this present Petition that "some inmates may be loathe to bring suit against adversaries to whose daily supervision and control they remain subject". Peter Lehman and Helen Howard-Hughes arrogantly held themselves to be above the judicial branch, the U. S. Constitution, and *Santosky v. Kramer*, 455 U.S. 745 (1982). And their conduct was in collusion with Margaret Jane Anderson. In *Dennis v. Sparks*, 449 U.S. 24 (1980), at pages 27 and 28, the Supreme Court held that private persons who are willful participants in joint action with the State or its agents are acting under color of law for purposes of Section 1983 actions. Copies of *Dennis v. Sparks* were filed in the lower court records by these petitioners.

Counsel for Lehman and Howard-Hughes, John T. Damron, in arguing that his parole official clients were above the law stumbled onto a case that should have efficiently covered the entire matter (a case from the State of Illinois).

The Illinois case provided that it is a valid condition of parole to require a parolee to strictly comply with orders from the *judicial branch* which relate to the parent-child relationship.

Stephen R. Bodell filed a federal Complaint within the time period allowed by law, within one year of the date on which his "supervision and control" by Peter Lehman ended. The Complaint was filed pursuant to 42 USC 1983, and complained of the unconstitutional deprivation of the parent-child relationship and the unconstitutional deprivation of access to courts of law by persons employed in the executive branch of Kentucky state government acting in collusion with Margaret Jane Anderson.

The case was assigned to federal district judge Thomas B. Russell. He granted some motions by defendants but denied other motions, specifically denying defendants' request for dismissal on statute of limitations grounds. The case was set for jury trial in December 1998. In June 1998 Stephen R. Bodell sought to have Judge Russell disqualify himself because he utilized as ground for one of his rulings his finding that Stephen was not a member of the bar of the Western District of Kentucky, a finding which he knew to be false. Judge Russell declined to disqualify for six months. In early December 1998 Stephen filed a copy of a decision authored by Sixth Circuit Judge Merritt, *Roberts v. Bailar*, 625 F.2d 125 (1980), in the district court record. The decision plainly states that 28 USC 455 concerning judicial disqualification is to be complied with *sua sponte* by the federal judiciary. Judge Russell's response was to cause a pool of jurors to be

summoned for the late December trial. On December 21, 1998 Stephen R. Bodell drove to Cincinnati, Ohio and filed a Mandamus Petition which requested the disqualification of Judge Russell. Judge Russell also disqualified himself on December 21, 1998, and he selected as his successor Owensboro federal district judge McKinley.

By written motion in the district court record Stephen R. Bodell sought to have Judge McKinley disqualify himself, on grounds specified in 28 USC 455 and in accordance with the concise instruction published in *Roberts v. Bailar*. Judge McKinley refused to rule on requested judicial disqualification and refused to even consider Stephen's written disqualification motion, placing himself beyond the reach of the disqualification statute enacted by the Congress. Judge McKinley was informed that Stephen would independently seek Mandamus disqualification. Within a matter of hours Judge McKinley faxed from Owensboro to the clerk's office in Paducah his Order, entered July 21, 1999, throwing out as a matter of law the case which predecessor Judge Russell had set for jury trial.

Judge McKinley's basis was a new ground injected suddenly and *sua sponte* by him into the case, which had not been stated or briefed by any party. Judge McKinley dismissed without notice to anyone, without any hearing, and in patent conflict both with published Kentucky decisions and with published decisions of the Supreme Court of the United States. Judge McKinley's dismissal was patently in conflict with the precise instruction published by the

Supreme Court in *Board of Regents v. Tomanio*, 446 U.S. 478 (1980) and published again by the Supreme Court in *Hardin v. Straub*, 490 U.S. 536 (1989). *Hardin v. Straub* was directed to the Sixth Circuit. Stephen R. Bodell timely moved pursuant to Civil Rule 59 that this dismissal be set aside, pointing to numerous reversible errors and also pointing out there had been such remarkable haste to suddenly *sua sponte* dismiss that Judge McKinley had completely forgotten about defendant Margaret Jane Anderson. Even though the written local rules for the Western District of Kentucky allow 15 days for the filing of a written response to a written motion, Judge McKinley faxed an Order denying within a few hours of the filing of Stephen's Civil Rule 59 motion.

Appeal was timely taken to the Sixth Circuit. In a separate Mandamus proceeding a three-judge panel of the Sixth Circuit stated the following in regard to the regular appeal. "That appeal is now fully briefed and is awaiting assignment to the court for disposition. .... The petitioner has raised the recusal issue as one of four issues in his appellate brief." Each of the four issues on appeal concerned erroneous legal determinations as opposed to erroneous factual determinations. In *Salve Regina College v. Russell*, 499 U.S. 225 (1991) the Supreme Court held federal courts of appeals shall review *de novo* district court determinations of state law. However, when the time came the Six Circuit panel of Judges Krupansky, Norris, and Suhrheinrich refused to conduct any review. Their June 20, 2000 Order, which is contained in the Appendix to this present Certiorari Petition,

evinces that they neither examined the trial court record nor examined the appellate briefs. They are completely mistaken as to the theory of the cause of action in the trial court. The June 20, 2000 Order does not address the four legal errors raised on appeal. The Kentucky tolling statute for limitations was quoted verbatim in the district court record and in the appeals court record. The recent published Kentucky decision, from 1988, interpreting tolling of limitations, and won for his client by then Kentucky attorney Stephen R. Bodell, was placed both in the district court record and in the appeals court record. Nevertheless, the panel composed of Judges Krupansky, Norris, and Suhrheinrich not only intentionally refused to apply Kentucky tolling rules but they also refused to even address tolling of limitations. The June 20, 2000 Sixth Circuit decision is patently in conflict with the holdings of the Supreme Court published repeatedly in *Board of Regents v. Tomanio* and again in *Hardin v. Straub*.

The Supreme Court of the United States, in Rule 10, uses the words "has so far departed from the accepted and usual course of judicial proceedings".

In *Montana v. United States*, 440 U.S. 147 (1979), at page 155, the Supreme Court provided that a necessary inquiry in preclusion analysis is "whether controlling facts ... have changed". A second federal case was filed in the Western District of Kentucky because Chief Justice Stephens of the Supreme Court of Kentucky informed these petitioners that there would be no KRS 26A.020 recusal process in the Sarah Bodell adoption by a dead man case.

Mitchum v. Foster, 407 U.S. 225 (1972) permits injunction of state court proceedings in pursuit of a Section 1983 cause of action in federal court. The second federal case sought damages, and injunctive and declaratory relief. Injunctive and declaratory relief were sought in regard to the Sarah Bodell adoption case.

The Sarah Bodell adoption case evidences an astounding departure from the accepted and usual course of judicial proceedings, presided over by Princeton, Kentucky trial court judge Bill Cunningham. Shortly after being summoned into the U. S. District Court judge Bill Cunningham signed, on Sunday, September 5, 1999, the Order contained in the Appendix to this present Petition.

During this adoption proceeding Stephen R. Bodell was prohibited by Peter Lehman and Helen Howard-Hughes from appearing in court opposite Margaret Jane Anderson. KRS 625.080 provided that a parent has a legal right to legal representation in an adoption/parental termination proceeding. Judge Cunningham refused to even look at KRS 625.080, thus ensuring that the "trial" in Sarah Bodell's adoption by a dead man case was an ex parte trial.

The prevailing standard in the Kentucky Revised Statutes both for parental termination and for adoption is the "best interests of the child". Judge Cunningham appointed a Princeton, Kentucky attorney named Joseph Baker to act as 8-year old Sarah's guardian in the adoption case. Mr. Baker's position, stated at electronically recorded hearing, was that felony criminal abuse of Sarah by her mother

bears no legal relevance to Sarah's best interests.

The prospective adoptive father, Johnny Oliver, stated that he expected to die during adoption proceedings or immediately after the conclusion of adoption proceedings. Judge Cunningham determined that the impending death of a prospective adoptive father bears no legal relevance to the best interests of an 8-year child. Mr. Oliver in fact died during proceedings at the Supreme Court of Kentucky related to the judicial recusal process provided by KRS 26A.020.

Judge Cunningham was informed that Kentucky's legislative branch, in KRS 199.492, had provided that in any adoption proceeding the same attorney shall not represent both a biological parent and a prospective adoptive parent and also had provided that any attorney who does so "shall be guilty of a Class A misdemeanor". Princeton attorney Jill Giordano at various stages of the adoption case openly represented both biological mother Margaret Jane Anderson and prospective adoptive father Johnny Oliver. Judge Cunningham determined that this statute was suspended when Stephen R. Bodell was a party litigant.

Judge Cunningham was informed that *Santosky v. Kramer*, 455 U.S. 745 (1982) had held that parental rights shall be protected by federal procedural due process. Judge Cunningham determined that *Santosky v. Kramer* was not binding in his judicial circuit.

Judge Cunningham was informed that the Kentucky legislature had enacted the Santosky standard of proof and numerous published Kentucky decisions had adopted this standard

of proof. Judge Cunningham refused to use the required clear and convincing evidence standard in the Sarah Bodell termination/adoption case and also refused to state any standard of proof in his adoption orders.

Judge Cunningham was informed in detail of the prohibitions imposed on Stephen R. Bodell by Peter Lehman and Helen Howard-Hughes. He also was informed of the holding in *Wright v. Howard*, Ky.App., 711 S.W.2d 492 (1986) that a valid adoption cannot be rendered against a parent placed in such a Catch 22 circumstance. Judge Cunningham determined that he was not bound by *Wright v. Howard*.

The above very briefly summarizes less than half of the astounding departures by Judge Bill Cunningham from the accepted and usual course of judicial proceedings. He also, in collusion with Caldwell court clerk Jo Ann Newsom and former Chief Justice Stephens, has unlawfully obstructed for a cumulative time period in excess of ten years the judicial recusal process provided by KRS 26A.020.

In the second federal case Owensboro federal judge McKinley summarily granted the requests of defendants for dismissal. His February 10, 2000 judgment and April 19, 2000 order concerning Civil Rule 59 motion are contained in the Appendix to this Petition.

These petitioners appealed to the Sixth Circuit. The Sixth Circuit Order filed February 7, 2001 is contained in the Appendix to this Petition. In their appeal these petitioners averred that a part of the membership of this particular federal appeals court were so far departing from the accepted and usual course of

judicial proceedings, and sanctioning such departures by lower courts, because of intentional and invidious racial bias against these partly Caucasian partly American Indian mixed race citizens. These petitioners averred that intentional refusal at this appeals court to comply with specific published holdings of the Supreme Court constitutes a deprivation of due process. The February 7, 2001 Order states the June 20, 2000 Order is res judicata.

ARGUMENT

QUESTION ONE

Question One stated at the beginning of the Petition asks: Is strict scrutiny the proper standard for application to intentional invidious discrimination by federal government actors against persons because they are mixed race persons who are descended in substantial part from the majority European Caucasian race and also in substantial part from a minority race?

Stephen R. Bodell is an adult native-born citizen of the United States. Infant Sarah J. Bodell is the biological daughter of Stephen R. Bodell and his only child. Sarah is also a native-born citizen of the United States.

Stephen is: 5/8 European German Caucasian, 1/4 native American Sioux Indian, and 1/8 European French Caucasian. The fact that these petitioners are mixed race U. S. citizens has been repeatedly placed in lower court records and has never been subjected to dispute.

Sioux Indian territory covered one of the

largest areas of any Indian group on the North American continent. It reached eastward into the present-day states of Iowa and Minnesota. Stephen was born in the State of Iowa. The Sioux divided themselves into three geographic areas: the eastern (dakota) Sioux, the western (lakota) Sioux, and the central (nakota) Sioux. Two of Stephen's great-grandparents, on his father's side of family, were full-blooded dakota Sioux Indians, born in the Great Plains area of the United States during the Civil War period. Two of Stephen's grandparents, on his mother's side of family, were born near the western edge of the present-day nation of Germany during America's Civil War period. Their surnames were Kettwig and Schutte.

The Fourteenth Amendment to the U. S. Constitution states in Section 1: " ... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Fifth Amendment states: " ... nor shall any person ... be deprived of life, liberty, or property, without due process of law; ...." The Fourteenth Amendment was aimed at state governments. The Fifth Amendment was aimed at the federal government (and federal government actors).

The Fourteenth Amendment verbatim guarantees due process and contains a separate verbatim guarantee of equal protection. The Fifth Amendment does not state a separate verbatim guarantee of equal protection. However, in *Bolling v. Sharpe*, 347 U.S. 497 (1954) it was held that the guarantee of equal protection of the laws also applies to the federal

government, through the due process clause of the Fifth Amendment. In *Hampton v. Mow Sun Wong*, 426 U. S. 88 (1976) it was provided that this guarantee of equal protection against the federal government cannot be vitiated absent a special national interest which has nationwide impact. These petitioners state there is no national interest in protecting two federal appellate panels who intentionally disobey the Supreme Court.

Since adoption of the Fourteenth Amendment in 1868 the Supreme Court has repeatedly concluded that intentional invidious government discrimination against racial minorities (or ethnic minorities) is suspect and that a *strict scrutiny* standard shall be applied. In *Strauder v. West Virginia*, 100 U.S. 303 (1880) the prohibition against black citizens serving as jurors was held to be a deprivation of the right to equal protection. In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) denial of laundry licenses only to Chinese persons was held to be invalid. In *Hernandez v. Texas*, 347 U.S. 475 (1954) exclusion of Mexican persons from jury service was held to be a denial of equal protection of the laws.

Over several decades it has been repeatedly communicated to Stephen R. Bodell, by Caucasian Americans who were not mixed race citizens and by African Americans who were not mixed race citizens, that mixed race persons are contaminated persons not "claimable" by any pure race. These petitioners state that mixed race persons are the persons most peculiarly vulnerable to arbitrary and invidious discrimination. The standard of strict scrutiny

should be the standard applicable to intentional invidious discrimination against persons of mixed racial ancestry

The Order filed in Sixth Circuit case 99-6232 is contained in the the Appendix. It states filing date of June 20, 2000 and a panel of Judges Krupansky, Norris, and Suhrheinrich. In later Sixth Circuit case 00-5679 the Bodells filed a detailed written motion requesting recusal of these three appellate judges pursuant to 28 USC 455. Section 455 states in (b)(1): "He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party ...." The Bodells stated their ground for recusal was racial bias by Judges Krupansky, Norris, and Suhrheinrich because they are partly Sioux Indian. The Bodells stated these judges intentionally and invidiously discriminated against them because of their racial ancestry and used their judicial office to intentionally deprive them of a full and fair opportunity to appeal. At the end of the February 7, 2001 Order filed in Sixth Circuit case 00-5679 the following opaque statement is provided: "Finally, we conclude that Bodell has not shown grounds to disqualify Judges Norris, Suhrheinrich, and Krupansky from this appeal. Accordingly, we deny Bodell's motion for judicial disqualification ...." Nevertheless, case 00-5679 was placed before a completely new panel (for the first time in four Sixth Circuit cases).

Eight federal judges dealt with the two cases which were the subject of regular appeal at the Sixth Circuit. One of the eight, the district judge from Paducah, Judge Russell, did not evidence racial prejudice against the mixed race Bodells

and did not completely deny them access to the courts. He set part of the Bodell claims against parole officials for trial. All of the other seven judges, Owensboro district judge McKinley, and Sixth Circuit Judges Krupansky, Norris, Suhrheinrich, Jones, Batchelder, and Clay, intentionally deprived the mixed race Bodells of a full and fair opportunity to litigate and to appeal. These seven judges *sua sponte* created false statement of fact, repeatedly. These seven judges refused to obey precisely stated holdings published in more than one Supreme Court case.

These seven judges are federal actors. Even though their orders may appear racially neutral on their face, as applied, replete with factual fraud and disobedience to the Supreme Court, the orders evidence intentional invidious discrimination against the mixed race Bodells.

Section 455 provides a federal judge shall disqualify "where he has a personal bias or prejudice concerning a party". Stephen R. Bodell and infant Sarah state: when a federal judicial officer is alleged to be prejudiced against a party because that party is a person of mixed racial ancestry, but there is a refusal to disqualify, such refusal to disqualify should be subjected to the strict scrutiny standard of equal protection review; when it is alleged that any federal government actor has engaged in intentional invidious discrimination against a person of mixed racial ancestry, such allegation should be the subject of strict scrutiny.

QUESTION TWO

Question Two stated at the beginning of the

Petition asks: Does repeated intentional refusal, by the same federal appeals court, to comply with and obey concise holdings published in more than one Supreme Court decision constitute: a deprivation of the Fifth Amendment right to due process of law; and/or a deprivation of the First Amendment right to petition the Government for a redress of grievances; and/or a deprivation of the right to a full and fair opportunity to litigate stated in *Allen v. McCurry*, 449 U.S. 90 (1980)?

There has been a pattern of cases, state and federal, saturated with attorney and judicial misconduct, aimed at depriving the Bodell petitioners of meaningful access to courts of law. These cases have also aimed at destroying petitioners' parent-child relationship. The sole reason for seeking to destroy this parent-child relationship is to heap government oppression on these mixed race citizéns. The Orders concluding two Sixth Circuit cases are contained in the Appendix. The Order in case 99-6232 was filed June 20, 2000. The Order in case 00-5679 was filed February 7, 2001. The February 7, 2001 Order states that the Order from case 99-6232 binds the appeals court in case 00-5679.

The Congress provided that these petitioners have a right to a federal judicial officer (or officers) who is (are) not prejudiced against them. 28 USC 455. This right to the absence of prejudice has been repeatedly recognized by the Supreme Court. In *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), at page 58, it was concisely stated as "trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause". The

petitioners proceed to the Supreme Court because Judges Krupansky, Norris, Batchelder, Suhrheinrich, Jones, and Clay have grievously departed from the accepted and usual course of judicial proceedings and have purposefully acted in a way that conflicts with *Board of Regents v. Tomanio, Hardin v. Straub*, and *Salve Regina College v. Russell.* These six circuit judges are not impartial and unbiased judicial officers. They are these petitioners' adversaries. And they have deprived these petitioners of due process and a full and fair opportunity to appeal, twice.

The February 7, 2001 Order states in the fifth paragraph: "In the current action, Bodell again alleged that these defendants violated his constitutional rights by imposing conditions of parole." This quoted statement is one of many *sua sponte* falsehoods knowingly created by these two appellate panels, intended to deceive. The purpose is to present the illusion of an appeal without merit. Bodell *never* alleged, in any action, that imposition of conditions of parole violated his constitutional rights; and both Sixth Circuit panels would know that if they looked at the records. Kentucky law is clear and the federal records reflect this law. The state statutes and regulations require that all conditions of parole be specified in writing in the parole certificate and be signed both by a quorum of the Parole Board members and by the parolee. Bodell did not sue other members of the Board. The termination of this parent-child relationship by Lehman and Howard-Hughes was never specified in a parole certificate signed by the required number of Board members. Bodell sued Lehman and Howard-Hughes for their

fraud: Lehman would imprison Bodell if Bodell violated his *recommendation* and Howard-Hughes wrote Bodell a threatening letter indicating she had initialed a secret memo which required Bodell to comply with Lehman's recommendation. Bodell would be summarily imprisoned if there was any contact with his daughter while on parole, even if the judicial branch awarded him custody. Bodell would be summarily imprisoned if, while on parole, he sued in federal court concerning this deprivation by Lehman and Howard-Hughes.

The first judge assigned to the first federal case, Judge Russell, specifically addressed the obstruction already placed in the federal record. Judge Russell's Order, entered February 13, 1998, states at page 3: "Lehman told Bodell to stay from any court proceedings concerning Sarah and warned him against 'rocking the boat' by bringing suit in federal court. Lehman told Bodell his parole would be revoked and he would be litigating from prison." However, on December 21, 1998, one week before scheduled trial, Judge Russell recused himself.

Once Owensboro judge McKinley was in the saddle, the deprivation of due process and a full and fair opportunity to litigate was continuous and absolute, both at the trial court and the appeals court levels. Judge McKinley provided absolutely no notice or opportunity to be heard, but instead simply reversed Judge Russell by faxing an Order to the clerk's office in Paducah. His new *sua sponte* ground for instant dismissal was that there had been a parental termination and Stephen R. Bodell was barred from federal court because he had not filed his federal case

by the date of the termination. Judge McKinley: fabricated the date of "termination"; ignored that there was not a final "termination" at an even later date because of pending motions addressed by the Supreme Court of Kentucky; and refused to either recognize or comply with *Board of Regents v. Tomanio* and *Hardin v. Straub.*

The Bodell petitioners filed the Kentucky tolling rules verbatim in all federal records. KRS 413.140 provides a one-year limitation "for an injury to the person of the plaintiff". KRS 413.190 provides for tolling during *obstruction* of commencement of an action by a prospective defendant. *Gill v. Warren*, Ky.App., 751 S.W.2d 33 (1988), one of the published reversals won for clients by attorney Stephen R. Bodell, reiterates that obstruction by a prospective defendant tolls the running of the time period. *Tomanio* states at page 484: "In Section 1983 actions, however, a state statute of limitations and the coordinate tolling rules are more than a technical obstacle to be circumvented if possible. In most cases, they are binding rules of law." *Hardin* states at page 539: "Limitations periods in Section 1983 suits are to be determined by reference to the appropriate 'state statute of limitations and the coordinate tolling rules'; ...." And *Hardin* states at page 544: "a State reasonably might conclude that some inmates may be loathe to bring suit against adversaries to whose daily supervision and control they remain subject ...." In two different cases Judge McKinley totally ignored KRS 413.190, *Gill v. Warren, Tomanio,* and *Hardin.*

Appeal from the first federal case was to the Sixth Circuit. Approximately 50 pages of briefs

were filed. *Salve Regina College v. Russell* was cited in detail, *de novo* review of determinations of state law. The resultant June 20, 2000 Order, in the Appendix, is a *sham.* The fourth paragraph of that Order states Bodell essentially reasserts "claims" on appeal, another *sua sponte* false statement. On appeal Bodell argued *legal errors*, four in number. This appellate panel: did not even address errors argued in briefs; ignored KRS 413.190; and refused to comply with *Hardin*, *Tomanio*, and *Salve Regina College.* The Order demonstrates almost total ignorance of both the trial court record and the appellate briefs. The sixth paragraph of the Order begins: "Bodell's claims accrued on September 11, 1995 ...." Even Judge McKinley did not assert that. The record is clear. Bodell's claims accrued in September 1994 and December 1994, and there was tolling through January 1996. The Bodell petitioners repeatedly asserted in every case that these sham federal proceedings were a deprivation of a full and fair opportunity to litigate.

The second federal case was filed because the conspiracy to unlawfully destroy this parent-child relationship was continuous and acquiring new participants such as Bill Cunningham. Judge McKinley again refused to address KRS 413.190, *Tomanio*, and *Hardin.* Instead he filed a judgment which is an avalanche of factual falsehood and calculated deprivations of due process. He even spent time justifying dismissal of defendants Paxton, Emberton, and Shadoan, when the Bodells had clearly stated they were asking for their dismissal.

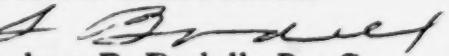
Appeal was to the Sixth Circuit. The fifth paragraph of the February 7, 2001 Order states:

"First, we agree with the district court that res judicata barred Bodell's claims ...." This second panel ratifies the sham by the first panel. This is in *conflict* with *Montana v. United States*, 440 U.S. 147 (1979), at page 164: "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation." Both panels refused to ever address the repeated assertions of deprivation of a full and fair opportunity to litigate. Petitioners state that ratification by the second panel of the prior sham is another deprivation of a full and fair opportunity to litigate.

However, the second panel did not stop there. The Order is laced with *sua sponte* false statement and legal error. One of more than a dozen possible examples is in the tenth paragraph, concerning Judge McKinley: "nor did he identify any judicial ruling which reflected an improper antagonism." Judge McKinley *in every case* refused to address or comply with *Tomanio* and *Hardin*.

These sham proceedings, complete with disobedience to published Supreme Court holdings, are a deprivation: of due process; of the right to petition for redress of grievances; and of a full and fair opportunity to litigate. They are an insult to the authority of the Supreme Court.

Petitioners request a Writ of Certiorari for review of the lower court cases.



Stephen R. Bodell, *Pro Se*
For himself and for his infant daughter
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No. 00-5679
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED, FEB 7, 2001, LEONARD GREEN, Clerk

STEPHEN R. BODELL; STEPHEN R. BODELL, on behalf of Sarah J. Bodell, an infant, Plaintiffs-Appellants

v. ORDER

MICHAEL MCDONALD; MARGARET JANE ANDERSON; BILL CUNNINGHAM; JO ANN NEWSOM; ROBERT F. STEPHENS; JILL GIORDANO; PETER LEHMAN; HELEN HOWARD-HUGHES; Defendants-Appellees

WILLARD B. PAXTON; THOMAS D. EMBERTON; WILLIAM L. SHADOAN; Defendants

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Before: JONES, BATCHELDER, and CLAY, Circuit Judges.

Stephen R. Bodell, a pro se Kentucky resident, and Stephen R. Bodell on behalf of his infant daughter Sarah J. Bodell, (collectively "Bodell"), appeal a district court order dismissing his complaint filed pursuant to 42 U.S.C. 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not

needed. Fed. R. App. P. 34(a).

Seeking monetary, injunctive, and declaratory relief, Bodell sued former Kentucky Court of Appeals Judge Michael McDonald, Bodell's former wife Margaret Jane Anderson, Caldwell Kentucky Circuit Court Judge Bill Cunningham, Caldwell Circuit Clerk Jo Ann Newsom, former Kentucky Supreme Court Chief Justice Robert F. Stephens, attorney Jill Giordano, parole officer Peter Lehman, Kentucky Parole Board Chairman Helen Howard-Hughes, attorney Willard B. Paxton, Kentucky Court of Appeals Judge Thomas D. Emberton, and Caldwell Circuit Judge William L. Shadoan. Bodell alleged that the defendants violated his rights under the First, Eighth, and Fourteenth Amendments when they conspired to terminate his parental rights and prevent him from contacting his daughter as a condition of his parole. Paxton, Emberton, and Shadoan were not served. The remaining defendants filed motions to dismiss or in the alternative for summary judgment. The district court granted summary judgment to the defendants and dismissed the case.

In his timely appeal, Bodell argues that: (1) the district court erred by sua sponte dismissing the claims against Paxton, Emberton, and Shadoan because they were not served; (2) the district court improperly applied a heightened pleading standard to Bodell's Section 1983 conspiracy claims; (3) the district court improperly relied on unpublished cases; (4) the dismissal of Bodell's earlier case against some of the defendants did not have a res judicata effect on this case; (5) there is no absolute bar

prohibiting federal courts from granting injunctive and/or declaratory relief concerning state court proceedings; (6) Newsom, Stephens and Cunningham were not entitled to judicial immunity for non-judicial acts in the complete absence of subject matter jurisdiction; and (7) district court Judge McKinley was not impartial. He has also filed a motion requesting that Judges Norris, Suhrheinrich, and Krupansky be disqualified from this appeal.

Upon de novo review, we conclude that the defendants were entitled to summary judgment for the reasons stated by the district court. *See Smith v. Ameritech*, 129 F.3d 857, 863 (6th Cir. 1997).

First, we agree with the district court that res judicata barred Bodell's claims against Lehman, Howard-Hughes, and Anderson. *See J.Z.G. Resources, Inc. v. Shelby Ins. Co.*, 84 F.3d 211, 214 (6th Cir. 1996). Bodell sued Lehman, Howard-Hughes, and Anderson in 1997, alleging that they unlawfully conditioned his 1994 parole from prison upon the provision that he have no contact with his daughter and ex-wife. The district court dismissed the case in August 1999, and this court affirmed the district court's decision. *See Bodell v. Howard-Hughes*, No. 99-6232, 2000 WL 875724 (6th Cir. June 20, 2000)(unpublished). In the current action, Bodell again alleged that these defendants violated his constitutional rights by imposing conditions of parole. Res judicata bars Bodell's claims because all of the required elements are present. *See Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 880 (6th Cir. 1997). Accordingly, these defendants were entitled to a judgment as

a matter of law. *See* Fed. R. Civ. P. 56c.

Second, we conclude that the district court properly granted summary judgment to Stephens, Cunningham, and Newsom on the grounds of judicial immunity. Under the doctrine of judicial immunity, a judge performing his or her judicial functions is absolutely immune from suits seeking monetary damages, *see Mireles v. Waco*, 502 U.S. 9, 9-10, (1991) (per curiam); *Barrett v. Harrington*, 130 F.3d 246, 254 (6th Cir. 1997), and judicial employees are immune from damages for the performance of quasi-judicial duties. *See Bush v. Rauch*, 38 F.3d 842, 847-48 (6th Cir. 1994). Cunningham acted only in a judicial capacity and within his jurisdiction over the termination and adoption case, as did Stephens when he responded to Bodell's attempt to seek Cunningham's recusal. Thus, neither defendant falls within the exceptions to judicial immunity. *See Mireles*, 502 U.S. at 11-12. Bodell presented no evidence that Newsom acted outside her quasi-judicial role as court clerk. *See Barrett*, 130 F.3d at 254. Thus, these defendants cannot be held liable for damages for their roles in the adoption and termination proceeding.

Third, the district court properly granted summary judgment to the defendants on Bodell's claims for injunctive and declaratory relief. Bodell asked the district court to enter an order preventing Cunningham from presiding over any cases involving Bodell, and to declare the termination and adoption proceedings null and void. To the extent that Bodell was challenging the final outcome of the state court proceeding, the *Rooker-Feldman* doctrine barred

Bodell's claim as an attempted appeal from the state court's decision. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923). If the state court case is not final because of post-judgment motions, as Bodell contends, the *Younger* abstention doctrine prevents the district court from ruling because the proceeding implicates important state interests and Bodell has an adequate opportunity to raise his challenges in that setting. *See O'Shea v. Littleton*, 414 U.S. 488, 499-504 (1974); *Younger v. Harris*, 401 U.S. 37, 43-44 (1971); *Lambert v. Turner*, 525 F.2d 1101, 1102-03 (6th Cir. 1975). Bodell presented no evidence beyond his own allegations to substantiate his claim that the state court judgment was procured through fraud and deception. *See Catz v. Chalker*, 142 F.3d 279, 294 (6th Cir. 1998).

Fourth, we conclude that the district court properly granted summary judgment to Giordano based on the statute of limitations. Giordano represented the biological mother and the adoptive father in the termination and adoption proceeding involving Bodell's daughter. Bodell's claim against Giordano accrued at the latest on September 11, 1995, when the Caldwell County, Kentucky Circuit Court entered an order for adoption which terminated Bodell's parental rights. By that time, Bodell knew or had reason to know of Giordano's role in the proceeding. *See Collyer v. Darling*, 98 F.3d 211, 220 (6th Cir. 1996). Because Bodell filed the present complaint more than one year later, his claim against Giordano is time-barred. *See* Ky. Rev. Stat. 413.140(1)(a); *Collard v. Kentucky Bd. of*

Nursing, 896 F.2d 179, 182 (6th Cir. 1990).

Bodell's argument that the district court improperly applied a heightened pleading standard to Bodell's Section 1983 conspiracy claims is without merit. The district court did not dismiss any of Bodell's claims because they were insufficiently pleaded, but instead relied on the substantive grounds indicated above.

Bodell's argument that the district court judge who decided his case was biased against him is also without merit. Bodell did not allege any extrajudicial conduct on Judge McKinley's part, *see Reed v. Rhodes*, 179 F.3d 453, 468 (6th Cir. 1999), nor did he identify any judicial ruling which reflected an improper antagonism. *See Liteky v. United States*, 510 U.S. 540, 555-56 (1994).

We have reviewed the remainder of Bodell's arguments on appeal and conclude that they are without merit. Finally, we conclude that Bodell has not shown grounds to disqualify Judges Norris, Suhrheinrich, and Krupansky from this appeal. Accordingly, we deny Bodell's motion for judicial disqualification and affirm the district court's order for the reasons stated by the district court. Rule 34(j)(2)C, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

s/Leonard Green
Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
CIVIL ACTION NO. 5:99CV-4-M

STEPHEN R. BODELL, and
STEPHEN R. BODELL, on behalf of
SARAH J. BODELL, an infant, PLAINTIFFS

v. MEMORANDUM OPINION AND ORDER

MICHAEL O. MCDONALD, et. al., DEFENDANTS

This matter is before the Court on various Motions by the Defendants to Dismiss or for Summary Judgment (DN 39, 41, 42, 44) and Motions by the Plaintiffs to Abstain, to Withdraw, and for Judicial Notice (DN 19, 20, 47, 49, 52). These issues have been fully briefed and are now ripe for decision. For the following reasons, the Defendants' motions are GRANTED, and the Plaintiffs' motions are DENIED, as moot.

The Plaintiffs, Stephen R. Bodell (Bodell) and Sarah J. Bodell (Sarah), filed this lawsuit under 42 U.S.C. 1983 to recover for injuries sustained as a result of the Defendants' violation of their constitutional rights to meaningful access to the courts and to establish and maintain a family relationship. The Plaintiffs claim the Defendants engaged in various actions under one common conspiracy to prevent Bodell from contacting his daughter, Sarah, and to terminate his parental rights. The alleged conduct relates to the Defendants' actions in imposing and enforcing conditions of Bodell's parole following his imprisonment for tax evasion

and during a Caldwell County Circuit Court termination and adoption proceeding wherein Bodell's parental rights were terminated.

The Plaintiffs' complaint asserts that the Defendants Lehman (Lehman) and Howard-Hughes (Howard-Hughes) acted under the color of state law to deprive the Plaintiffs of their First Amendment right to meaningful access to the courts, and Fourteenth Amendment rights to equal protection, due process, and family relationships. It also claims these Defendants deprived Bodell of his Eighth Amendment right to be free from cruel and unusual punishment. The Plaintiffs sued these Defendants in their individual and official capacities. The allegations state that these Defendants violated these rights by imposing and enforcing a condition of his parole which prohibited him from contacting his daughter, Sarah. The complaint further maintains that Lehman and Howard-Hughes engaged in a conspiracy to obstruct the due administration of justice and interfere with his family relationships. The Plaintiffs filed an amended complaint asserting additional allegations of mail fraud against Howard-Hughes. The Plaintiffs claim that, in a letter sent to Bodell, Howard-Hughes threatened him to abide by the conditions of his parole thereby defrauding him of his right to maintain a parent-child relationship. The complaint seeks money damages against these Defendants.

The complaint asserts that Margaret Jane Anderson (Anderson) participated with Lehman and Howard-Hughes to deprive the Plaintiffs' of their constitutional rights. Bodell claims that

Anderson coerced Lehman to force him to sign parole documents which prevented him from contacting Sarah and influenced Howard-Hughes to threaten him with prison if he should violate this condition. Additionally, the complaint states that Anderson engaged in criminal perjury in the adoption and termination proceeding in Caldwell County Circuit Court. Plaintiffs seek money damages for these violations.

The complaint asserts claims against Judge Michael O. McDonald (McDonald) and Judge Thomas D. Emberton (Emberton) in their official capacity. Judge McDonald and Judge Emberton are both judges of the Kentucky Court of Appeals.[1] The complaint maintains that these judges rendered a fraudulent opinion which found the Kentucky Supreme Court had suspended Bodell from the practice of law and that Bodell was divorced from his wife, Anderson. The complaint seeks a permanent injunction to prevent these judges from being assigned to a case where the rights of the Plaintiffs are at stake.

The Plaintiffs sued Judge Bill Cunningham (Cunningham) in his individual and official capacities. Judge Cunningham is a circuit court judge in the Kentucky Counties of Caldwell, Livingston, Lyon, and Trigg. The complaint asserts that Judge Cunningham violated the Plaintiffs' constitutional rights while presiding over the termination and adoption proceeding. More specifically, the Plaintiffs

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1 Judge McDonald is now retired from the Kentucky Court of Appeals. However, he occasionally presides over cases as a special judge.

assert that Judge Cunningham refused to permit Bodell to refile an affidavit seeking his recusal as permitted by KRS 26A.020 and a prior order from the Kentucky Supreme Court. Additionally, the complaint states that Judge Cunningham engaged in a civil conspiracy with others to obstruct justice and prevent the filing of Bodell's affidavit. The Complaint seeks referral to federal prosecutors, a permanent injunction preventing Judge Cunningham from participating in any future actions involving the rights of the Plaintiffs, a declaration that the termination and adoption proceeding is null and void, and money damages.

The Complaint also asserts claims against Jo Ann Newsom (Newsom), the Caldwell County Circuit Clerk, in her official and individual capacities. The Plaintiffs allege Newsom, acting under the color of state law, violated their constitutional rights and committed felony forgery. Bodell claims Newsom fraudulently misrepresented the time and location of the adoption and termination proceeding, indicated Judge Cunningham made a mistake in his scheduling, filed a perjured sworn statement to the Kentucky Court of Appeals, and criminally obstructed the due administration of justice. The complaint also states Newsom improperly prevented Bodell's recusal affidavit from being forwarded to the Kentucky Supreme Court. As to Newsom, the complaint seeks an injunction requiring the forwarding of Bodell's recusal affidavit and money damages.

The Plaintiffs' sued Justice Robert F. Stephens (Stephens) in his official and individual capacities. Justice Stephens recently

retired as Chief Justice of the Kentucky Supreme Court. The complaint asserts that Justice Stephens violated the Plaintiffs constitutional rights by engaging in a conspiracy to obstruct justice and prevent Bodell from filing his recusal affidavit.[2] The Plaintiffs seek a permanent injunction preventing Justice Stephens from presiding over any case where the legal rights of the Plaintiffs are at stake and money damages.

The complaint also asserts claims against Willard B. Paxton (Paxton) and Jill Giordano (Giordano). The allegations asserted against these two Defendants stem from their participation in the termination and adoption proceeding. The court appointed Paxton as warning order attorney for Bodell in the termination and adoption proceeding. Giordano represented the biological mother, Anderson, and the adoptive father in this proceeding. The complaint asserts that Paxton deprived the Plaintiffs of their constitutional rights by failing to attend the termination and adoption hearing and violated various provisions of the Code of Professional Conduct by representing Anderson in subsequent federal court proceedings. The Plaintiffs assert that Giordano violated their

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2 The Complaint also references certain actions taken by Justice Stephens while participating in bar disciplinary proceedings which led to Bodell's suspension from the practice of law. However, the plaintiffs do not rely on these actions as a basis for recovery. See DN 46 p 4 ("Plaintiffs do not pursue Mr. Stephens in the present actions concerning 'factual findings and decisions' in bar proceedings.") Therefore, the Court will not address these allegations.

constitutional rights by representing both the biological mother and prospective adoptive father. The complaint alleges that both Paxton and Giordano participated in a conspiracy to deprive Plaintiffs of their constitutionals rights. The Plaintiffs seek money damages against these Defendants.

Finally, the complaint seeks injunctive relief against the Judge Will Shadoan (Shadoan), Chief Circuit Court Judge for Caldwell, Livingston, Lyon, and Trigg counties. The Plaintiffs complain that Judge Shadoan is biased against them due to Bodell's past legal success. In the event Judge Cunningham recuses himself from future proceedings involving the Plaintiffs, such actions will be assigned to Judge Shadoan. The Plaintiffs seek an injunction to prevent Judge Shadoan from participating in any proceedings where the Plaintiffs' rights were at stake.

DEFENDANTS LEHMAN, HOWARD-HUGHES, AND ANDERSON

Defendants Lehman and Howard-Hughes filed a motion to dismiss or in the alternative for summary judgment. This motion asserts three basis for dismissal: 1) statute of limitations, 2) immunity, and 3) claim preclusion or *res judicata*. The Court will treat this as a motion for summary judgment. The Defendant Anderson also filed a motion to dismiss.[3] After examining

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3 The Plaintiffs moved to strike Anderson's motion to dismiss for failure to comply with Court deadlines. DN 48. Additionally, they requested the right to respond to the motion to dismiss in the event the Court denies the motion to strike. While Anderson's motion to dismiss focuses on the statute

the positions of the parties, the Court finds that dismissal is warranted based on the principles of claim preclusion. In a prior action filed with this Court (Bodell I), Bodell asserted the very same allegations set forth in the current complaint – that the imposed conditions of his parole violated his Constitutional rights to a family relationship and constituted cruel and unusual punishment. Bodell v. Howard-Hughes, No. 5:97CV-16-M. In Bodell I, the Court found that even assuming the constitutional rights were violated as alleged, such violations continued only until September 11, 1995,[4] and the statute of limitations barred this action because the lawsuit was not filed within one year of this date. The Court dismissed this case on August 4, 1999.

Claim preclusion prevents the Plaintiffs' attempt to relitigate these claims in the present lawsuit. "The doctrine of claim preclusion, sometimes referred to as *res judicata*, mandates that if an action results in a judgment on the merits, that judgment operates as as absolute bar to any subsequent action on the same cause

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of limitations, Rooker-Feldman doctrine, and failure to present a case or controversy, DN 44, the same principles of claim preclusion raised in Lehman and Howard-Hughes' motion to dismiss apply to the claims asserted against her. The Plaintiffs fully addressed this legal position in responding to Lehman and Howard-Hughes' motion. Therefore, Plaintiffs suffer no prejudice from this Court's ruling.

4 On this date, the state circuit court entered an order terminating Bodell's parental rights. This order was effective to terminate his parental rights upon its entry, despite the filing of two motions to alter, amend, or vacate. KRS 199.520(2).

between the same parties." Black v. Ryder/ P.I.E. Nationwide, Inc., 15 F.3d 573, 582 (6th Cir. 1994). The Court's decision in Bodell I constitutes such a decision on the merits. Cemer v. Marathon Oil Co., 583 F.2d 830, 831 - 832 (6th Cir. 1978). In addition to barring the same claims brought in the first lawsuit, claim preclusion also prevents the litigation of issues that might or should have been brought in the first lawsuit. Black, 15 F.3d at 582. Thus, the subsequent mail fraud and conspiracy claims are likewise barred in the present suit. The conduct serving as a basis for both of these claims is the very same conduct alleged in the first action – the imposition and enforcement of the conditions of parole. The Plaintiffs assert no new acts which would independently support a cause of action against Lehman, Howard-Hughes, and Anderson for conspiracy[5] or mail fraud.

The Plaintiffs insist that they could not have brought the conspiracy claim in the first action because of the continuing nature of the conspiracy and subsequent unlawful events. The last of the unlawful events in the conspiracy

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5 The Court additionally questions whether the Plaintiffs have sufficiently pled their conspiracy claim under Section 1983. Generally, wholly conclusory allegations are insufficient to state a cognizable claim for relief. Gutierrez v. Lynch, 826 F.2d 1534, 1538 (6th Cir. 1987). The complaint merely alleges that all of the Defendants engaged in a conspiracy to obstruct justice without attempting to allege any facts concerning their agreement or common plan.

consisted of a letter from the Defendant Stephens to Bodell written January 8, 1998. DN 4 p 10. "There can be no claim preclusion because only part of the cause of action was before the court in 5:97CV-16 due to repeated later occurring unlawful events." DN 4 p 12. However, as discussed above, no new unlawful acts were alleged in this lawsuit. The same unlawful actions of Lehman, Howard-Hughes, and Anderson at issue in Bodell I are the unlawful acts at issue in the present case. The Plaintiffs could have amended their complaint in Bodell I to assert their conspiracy and mail fraud claims. However, they elected not to do so despite the active status of Bodell I at the time of both the last overt act by the Defendant Stephens and the filing of this suit. The principles underlying the doctrine of claim preclusion are designed to prevent a plaintiff from bringing only part of his or her claims based on a particular event, transaction, or occurrence. Therefore, the Court finds claim preclusion bars the claims asserted against Lehman, Howard-Hughes, and Anderson.

DEFENDANTS MCDONALD, STEPHENS, CUNNINGHAM, AND NEWSOM

The Defendants McDonald, Stephens, and Newsom collectively filed a motion to dismiss claiming that the action is barred by the statute of limitations, the Rooker-Feldman doctrine, the failure to present a case or controversy, Eleventh Amendment immunity, and absolute judicial immunity. DN 42. The Defendant Cunningham also filed a motion to dismiss asserting the same legal arguments advanced by the defendants McDonald, Stephens, and

Newsom, except for the lack of a case or controversy. See DN 41 & 12. The Plaintiffs timely filed a response to both of these motions. See DN 46 & 15. The Court shall construe the motion to dismiss as a motion for summary judgment because the Plaintiffs attached matters outside the pleading to its response. Morton v. ICI Acrylics, Inc., 69 F.Supp.2d 1038, 1041 (W.D.Tenn. 1999).

The Court finds that the doctrine of judicial immunity and principles of comity preclude the Plaintiffs' claims against these Defendants. Judicial immunity prevents the Plaintiffs from recovering the monetary damages claimed against Judge Cunningham and Justice Stephens. The Supreme Court "has consistently adhered to the rule that judges defending against Section 1983 actions enjoy absolute immunity from damages liability for acts performed in their judicial capacities." Dennis v. Sparks, 449 U.S. 24, 27 (1980) (internal citations and quotations omitted); see also Barns v. Winchell, 105 F.3d 1111, 1115 (6th Cir. 1997). "Judicial immunity is an immunity from suit, not just from ultimate assessment of damages.... Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial." Mireles v. Waco, 502 U.S. 9, 11 (1991) (citing Pierson v. Ray, 386 U.S. 547, 554 (1967)) ("Immunity applies even when the judge is accused of acting maliciously and corruptly.") However, two instances exist where a judge's actions are not protected by judicial immunity. The first applies to nonjudicial actions, i.e.

actions not taken in the judge's judicial capacity. Mireles, 502 U.S. at 11. An act is judicial in nature if it was something normally performed by a judge or related to a general function traditionally performed by the judge and the parties dealt with the judge in his judicial capacity. Barnes, 105 F.3d at 116. The second situation occurs when the judge's actions, though judicial in nature, are taken in complete absence of all jurisdiction. Mireles, 502 U.S. at 12.

Here, the actions of Justice Stephens and Judge Cunningham were actions performed in their judicial capacity and they were not done in absence of jurisdiction. Judge Cunningham's failure to send Bodell's recusal affidavit was not a nonjudicial act. He attempted to interpret Bodell's letter and take actions consistent with his wishes. The judge's actions during the termination and adoption proceeding were clearly within his jurisdiction. Bodell's failure to obtain the ultimate result he sought does not open Judge Cunningham to liability. Likewise, Justice Stephens performed the actions at issue in his judicial capacity. He accepted the papers and letters filed by Bodell with the Caldwell Circuit Court, attempted to decipher them, and responded. Even if he failed to forward Bodell's recusal affidavit, this was done in his position as the chief justice of the Kentucky Supreme Court. Therefore, the claims for monetary relief asserted against Judge Cunningham and Justice Stephens are barred by judicial immunity.

Judicial immunity also bars the claim for monetary damages asserted against Newsom. "Absolute judicial immunity has been extended

to non-judicial officers who perform 'quasi-judicial' duties." Bush v. Rauch, 38 F.3d 842, 847 (6th Cir. 1994). Thus, a judicial employee, such as a circuit court clerk, is not subject to liability for the performance of tasks which are integral or intertwined with the judicial process. Id. Such persons are considered an arm of the court and the judicial officer who is immune from suit. Id. To determine if the employee's action is immune from suit, the Court must examine the nature of the function performed while not focusing on the identity of the person performing the act. Id., Foster v. Walsh, 864 F.2d 416, 417 (6th Cir. 1988) ("The appropriate inquiry is whether the function in question is a truly judicial act or an act that simply happens to have been done by judges."). Newsom's actions were judicial in function. She was acting as an arm of Judge Cunningham and attempted to carry out his orders when she filed Bodell's letters in the record in the case. Even the refusal to file papers is an act performed in the judicial process and therefore, would be immune from suit. Thus, the Plaintiffs cannot obtain an award of monetary damages against Newsom in her individual capacity.

While judicial immunity bars the claims for for monetary damages, it does not prevent prospective injunctive relief. Mireles, 502 U.S. at 10 fn. 1. The Plaintiffs seek an injunction to prevent Judge Cunningham, Judge McDonald, and Justice Stephens from presiding over any cases where their legal rights are at stake. It also seeks an injunction to compel Newsom to transmit Bodell's recusal affidavit to the Kentucky Supreme Court. Principles of comity

and federalism prevent this Court from granting such relief. Cohn v. Bracy, Case No. 93-5883, 1994 WL 328302 *4 (6th Cir. July 6, 1994); 28 U.S.C. 2283. Adequate state remedies exist which the Plaintiffs may utilize to seek the recusal of these judges in future cases. Therefore, the claims for injunctive relief should be dismissed.[6]

Additionally, the Court lacks jurisdiction to declare null and void the state court judgment terminating Bodell's parental rights and granting the adoption. Granting such relief would be the functional equivalent to reversing the decision on appeal. Under the Rooker-Feldman doctrine, lower federal courts lack jurisdiction to review a case litigated and decided in state court. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483 n. 16 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923); Gottfried v. Medical Planning Serv., Inc., 142 F.3d 326, 330 (6th Cir.), cert. denied, 119 S.Ct. 592 (1998). An unsatisfied state court litigant must appeal his or her judgment through the state court system and then to the Supreme Court, which is the only federal court with power to overturn state court judgments. The Rooker-Feldman doctrine applies where the issues before the district court are inextricably intertwined with the claims asserted in state court. A federal plaintiff's claims are

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[6] The Plaintiffs indicate that they are moving by a separate document to dismiss Counts I and II. DN 46 p 1. These counts state claims against Judge McDonald and Judge Emberton. However, the Plaintiffs have failed to file such a formal motion.

inextricably intertwined with the state court decision if the federal claims can succeed only to the extent that the state court wrongly decided the issues before it, and the federal action raises a "specific grievance" to the state court's actions or application of the law, rather than a "general challenge" to the constitutionality of a state law. Catz v. Chalker, 142 F.3d 279, 293 (6th Cir. 1998). The complaint seeks a declaration that the termination and adoption proceedings are null and void based on the judge's failure to forward or act on the recusal affidavit. This is a specific grievance to an action which is intertwined to the authority and ability of the state court judge to render a decision. Forsyth v. Bringer, Case No. 97-3872, 1998 WL 415841 *2 (6th Cir. June 16, 1998), cert. denied, 119 S.Ct. 420 (1998) (applying Rooker-Feldman doctrine to civil rights claim seeking reversal of state court judgment because court limited the Plaintiff's ability to file certain pleadings and enter certain evidence). Therefore, this Court lacks jurisdiction to grant the relief requested to overturn the state court termination and adoption decision.

DEFENDANT GIORDANO

Giordano filed a motion to dismiss on the grounds that the Plaintiff's claims are barred by the statute of limitations, the Rooker-Feldman doctrine, and the failure to present a case or controversy. DN 56. The Plaintiff's responded to this motion by adopting by reference its previous arguments asserted in its responses to the motions filed by the other Defendants. DN 57.

Again, the Court will treat this motion as a motion for summary judgment because these responses contain materials outside the pleadings. The Plaintiffs complain that Giordano violated their constitutional rights during the termination and adoption proceeding in the Caldwell Circuit Court. As described above, the court entered an order in September of 1995 which terminated Bodell's parental rights. The statute of limitations for actions arising under 42 USC 1983 is Kentucky's one-year statute for personal injury. The Plaintiffs failed to bring this action within one year from Giordano's conduct in the termination and adoption proceeding. Therefore, the claims must be dismissed.[7]

DEFENDANTS EMBERTON, PAXTON AND SHADOAN

While Paxton, Judge Emberton, and Judge Shadoan did not file a motion to dismiss or for summary, the Court will *sua sponte* dismiss the claims asserted against these Defendants. The Court may *sua sponte* dismiss a case or enter summary judgment where the plaintiff's claims are without merit. See generally Parks v. Conley, No. 98-5064, 1999 WL 195740 *2 (6th Cir. March 23, 1999); Tidik v. Kaufman, No. 96-1377, 1998 WL 466571 *1 (6th Cir. July 31, 1998); Baker v. Director, United States Parole

7 The Court believes that the Plaintiffs claims of of a conspiracy against Giordano should also be dismissed because of the failure to properly plead such claims.

Comm'n, 916 F.2d 725, 726 (D.C. Cir. 1990). Normally, a court must provide a party notice and an opportunity to respond before entering summary judgment or dismissing an action *sua sponte*. Benson v. O'Brian, 179 F.3d 1014, 1015 (6th Cir. 1999) (citing Tingler v. Marshall, 716 F.2d 1109, 1111-12 (6th Cir. 1983)); Salehpour v. University of Tenn., 159 F.3d 199, 203-04 (6th Cir. 1998), cert. denied, 119 S.Ct. 1763 (1999); Employers Ins. of Wausau v. Petroleum Specialties, Inc., 69 F.3d 98, 104-05 (6th Cir. 1995). However, the party against whom *sua sponte* summary judgment or dismissal is entered must show that the lack of notice or inability to respond was prejudicial. Harrington v. Vandalia-Butler Bd. Of Ed., 649 F.2d 434, 436 (6th Cir. 1981). The claims against Paxton, like those asserted against Giordano, are barred by the applicable one-year statute of limitations. Principles of comity and federalism prevent the injunctive relief sought against Judge Emberton and Judge Shadoan. The Court finds that the Plaintiffs suffer no prejudice from entry of this order without the ability to respond as they had adequate opportunity to address these issues in responding to the motions filed by the other Defendants. See K.E. Resources, Ltd. v. BMO Fin. Inc. (In re Offshore Management Corp.), 119 F.3d 409, 412 (6th Cir. 1997) (holding summary judgment on issue of lien priority proper despite failure of party to move for summary judgment because the determinative issues were fully briefed in response to another parties motion for summary judgment); Harrington v. Vandalia-Butler Bd. of Ed., 649 F.2d 434, 436 (6th Cir. 1981) (No prejudice occurs where the legal issue

has already been fully briefed and no factual dispute exists.). Additionally, the Court notes that these Defendants were never served with process as prescribed under Federal Rule of Civil Procedure 4. This rule provides a plaintiff with 120 days in which to perfect service, and the failure to do so may result in dismissal after notice unless good cause can be shown. The Court cannot imagine any "good cause" which would excuse the failure to serve these Defendants more than a year since the filing of the complaint. Thus, the Court may properly *sua sponte* dismiss this action or enter summary judgment in favor of the Defendants Paxton, Emberton, and Shadoan.

In light of these rulings, the Court need not address the Plaintiffs' motion to withdraw the previous motions to abstain, motion for judicial notice, and motion for notice of purported acts of Defendant Cunningham DN 19, 20, 47, 49, & 52. These motions shall be denied, as moot.

For the foregoing reasons, IT IS HEREBY ORDERED that

1) The Motions to Dismiss or for Summary Judgment filed by the Defendants' Lehman, Howard-Hughes, and Anderson, DN 39 & 44, are GRANTED.

2) The Motions to Dismiss filed by the Defendants' Cunningham, Stephens, McDonald, & Newsom, DN 41 & 42, are GRANTED.

3) The motion to dismiss filed by the Defendant Giordano, DN 56, is GRANTED.

4) The Claims asserted against the Defendants Paxton, Emberton, and Shadoan are DISMISSED.

5) The Motion to abstain, to withdraw, for

judicial notice, and for notice of action filed by the Plaintiffs, DN 19, 20, 47, and 52, are DENIED, as moot.

THIS IS A FINAL AND APPEALABLE ORDER AND THERE IS NO JUST CAUSE FOR DELAY.

This the 8th day of February, 2000.

s/Joseph H. McKinley, Jr.
Joseph H. McKinley, Jr.
Judge,
United States District Court

ENTERED FEB 10 2000
JEFFREY A. APPERSON, CLERK
cc: counsel of record

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
CIVIL ACTION NO. 5:99CV-4-M

STEPHEN R. BODELL,
Sarah J. Bodell, an infant, PLAINTIFFS

v.

MICHAEL MCDONALD, et. al., DEFENDANTS

ORDER

The Court having considered Plaintiffs' Motion to Alter and Amend and memoranda filed in opposition thereto finds that Plaintiffs failed to justify granting the relief requested. Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' motion is DENIED.

This 17 day of April, 2000.

s/Joseph H. McKinley, Jr.
JOSEPH H. MCKINLEY, JR.
JUDGE, U. S. DISTRICT COURT

ENTERED APR 19 2000
JEFFREY A. APPERSON, CLERK

cc: Plaintiffs *pro se*
Defendants
Counsel of Record

No. 99-6232
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED, JUN 20, 2000, LEONARD GREEN, Clerk

STEPHEN ROBERT BODELL, Plaintiff-Appellant

v. ORDER

HELEN HOWARD-HUGHES, Chairperson of the Kentucky Parole Board; PETER LEHMAN, Probation and Parole Officer; MARGARET JANE ANDERSON, also known as Jane A. Bodell; KENNETH LEWIS, Probation and Parole Officer; LINDA FRANK, Official and Personal Capacities; Defendants-Appellees

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Before: KRUPANSKY, NORRIS, and SUHRHEINRICH, Circuit Judges.

Stephen Bodell, a pro se Kentucky litigant, appeals a district court judgment dismissing his complaint filed pursuant to 42 U.S.C. 1983. This case has been referred to a panel of the court pursuant to Rule 34 (j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Seeking monetary damages, a declaratory judgment, and injunctive relief, Bodell sued the Kentucky Attorney General (A. B. Chandler III), the Chairman of the Kentucky Parole Board

(Helen Howard-Hughes), her successor (Linda Frank), and parole officers (Peter Lehman and Kenneth Lewis) in their official and individual capacities. Bodell sued his ex-wife (Margaret Jane Anderson) in her personal capacity and several unidentified John and Jane Does. Bodell claimed that the defendants unlawfully conditioned his 1994 parole from prison upon the provision that he have no contact with his daughter and ex-wife. Bodell claimed that: 1) the defendants unlawfully deprived him of his parental relationship with his daughter; 2) the defendants denied him a fundamental liberty interest without due process in violation of the Fourteenth Amendment; 3) the defendants denied him meaningful access to the courts in violation of the First Amendment; and 4) the defendants violated his Eighth Amendment right to be free from cruel and unusual punishment,

The district court sua sponte dismissed the John and Jane Does. The district court also dismissed the Kentucky Attorney General and granted the defendant state officials immunity under the Eleventh Amendment as to claims asserted against them as state officials acting in their official capacities. The district court also granted defendants Hughes and Lehman — absolute immunity for claims associated with their decision to impose conditions of parole on Bodell. The court granted Bodell's motion to dismiss Linda Frank as a defendant. Finally, the district court dismissed the complaint against the remaining defendants because it was barred by the applicable statute of limitations.

In his timely appeal, Bodell essentially reasserts the claims that he set forth in the

district court.

This court renders de novo review of a district court judgment dismissing a suit as barred by a statute of limitations. *See Capital Tracing, Inc. v. United States,* 63 F.3d 859, 861 (9thCir. 1995); *see also Sierra Club v. Slater,* 120 F.3d 623, 630 (6thCir. 1997) (this is a question of law subject to plenary review).

Bodell's claims accrued on September 11, 1995, when the Caldwell County (Ky.) Circuit Court entered an order for adoption which terminated Bodell's parental rights with his daughter. A statute of limitations begins to run when the plaintiff knows or has reason to know of the injury that is the basis of his action. *See Collyer v. Darling,* 98 F.3d 211 220 (6thCir. 1996). Inasmuch as Bodell did not file his complaint within one year of September 11, 1995, he failed to comply with the applicable statute of limitations for actions filed pursuant to 42 U.S.C. 1983. Thus, his complaint was barred by the one-year statute of limitations.

Accordingly, the district court's judgment is hereby affirmed pursuant to Rule 34(j)(2)(C), Rules of the Sixth Circuit, for the reasons set forth in the court's memorandum opinion and order of July 21, 1999, and order of August 4, 1999.

ENTERED BY ORDER OF THE COURT

s/Leonard Green
Clerk

SUPREME COURT OF KENTUCKY
95-SC-1047-MR

STEPHEN ROBERT BODELL, APPELLANT

v. APPEAL FROM COURT OF APPEALS
NO. 95-CA-2455-OA

BILL CUNNINGHAM, JUDGE, CALDWELL CIRCUIT COURT; JO ANN NEWSOM, CLERK, CALDWELL CIRCUIT COURT; JOHNNY OLIVER; MARGARET JANE ANDERSON, A/K/A JANE A. BODELL; and JOSEPH C. BAKER; APPELLEES

OPINION AND ORDER

On August 1, 1995, appellant filed two motions for certification of judicial disqualification with accompanying affidavits which were noticed for a hearing on August 8, 1995, in the Caldwell Circuit Court. Appellant, however, failed to appear and the motions were subsequently dismissed. His petition for writ of prohibition and/or mandamus was denied in the Court of Appeals, which found that:

> The respondent judge has neither refused to proceed, nor erroneously proceeded on a subject within his jurisdiction. KRS 26A.020 does not require that a motion be filed in order for a circuit court to certify a judicial disqualification matter to the Chief Justice. However, petitioner filed such a motion and the respondent judge disposed of it. Further, the court notes the statement by the respondent judge that he has no

> objection in recusing and allowing another judge to deal with petitioner's post-judgment motions and proceedings. Consequently, petitioner may obtain the relief which he seeks in this petition by filing a motion in the Caldwell Circuit Court.

Bodell v. Cunningham, Ky.App., 95-CA-2455-OA, at 2 (Nov. 8, 1995).

We agree. While KRS 26A.020 provides a mechanism for an affidavit to be submitted to the Chief Justice for the appointment of a special judge if circumstances permit, such does not, and cannot involve motions before the trial court. Motions seeking the recusal of the trial judge, which are then presented for hearing by that same trial judge, can then be properly considered by him. The judgment of the Court of Appeals is affirmed in all respects; provided, however, appellant may refile his affidavit for recusal pursuant to KRS 26A.020.

Baker, Graves, King, Lambert, Stumbo and Wintersheimer, JJ., concur. Stephens, C.J., not sitting.

ENTERED: May 23, 1996.

s/Joseph E. Lambert
DEPUTY CHIEF JUSTICE

COMMONWEALTH OF KENTUCKY
CALDWELL CIRCUIT COURT
CIVIL ACTION NO. 94-AD-00003

JOHNNY OLIVER, PETITIONER

V.

ORDER

MARGARET JANE ANDERSON,
STEPHEN ROBERT BODELL, AND
SARAH JANE BODELL, AN INFANT,
RESPONDENTS

The Respondent, Stephen Robert Bodell, filed a motion on September 29, 1995, to continue as well as a motion to alter to alter, amend or vacate judgment of adoption. The Court in reviewing the file and from its own recollection concludes that the Respondent failed to appear at the designated time for these motions. However, the Court never formally entered an order ruling on said motions.

THEREFORE, IT IS HEREBY ORDERED AND DIRECTED that Respondent, Stephen Robert Bodell's, motion to continue and motion to alter, amend or vacate filed on September 29, 1995, are hereby DENIED.

This 5th day of September, 1999.

s/Bill Cunningham
Circuit Judge

ENTERED
SEP 09 1999
CALDWELL CIRCUIT/
DISTRICT CLERK

SUPREME COURT OF KENTUCKY
2000-SC-598-D
(1999-CA-2445-MR)

STEPHEN ROBERT BODELL, MOVANT

v. CALDWELL CIRCUIT COURT
1994-AD-3

MARGARET JANE ANDERSON, ET AL.,
RESPONDENTS

OPINION AND ORDER

The motion for review of the decision of the Court of Appeals is granted, the Court of Appeals opinion and order dismissing is vacated, and the case is remanded to the Court of Appeals for decision on the merits as fully briefed.

Although movant's timely postjudgment motion (filed on September 22, 1995) remained pending for nearly four years, his appeal was pursued in a timely manner following entry of the only order resolving his request for postjudgment relief on September 9, 1999. The order signed in November of 1995 and entered in January of 1996 addressed only Johnny Oliver's postjudgment motion.

Graves and Johnstone, JJ., not sitting.

Lambert, C.J., Cooper, Keller, Stumbo and Wintersheimer, JJ., and Special Justices Carl J. Bensinger and W. Douglas Myers all concur.

ENTERED March 14, 2001.

s/Joseph E. Lambert
Chief Justice